IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 551 OF 2007

Commercial Co-operative Bank Ltd. & anr. .. Petitioner

versus

Subhash Keshav Savant & ors..... Respondent.

Shri S.S.Patwardhan for the petitioner
Shri Amit Borkar for the Respondent no.1.

CORAM; A.P. DESHPANDE, J.
DATED; 13TH AUGUST, 2007

P.C.;

1. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of parties.

2. The petitioner is a Co-operative Bank. The respondent no.1 has availed the loan facility from the petitioner bank. The amount of loan involved in the present writ petition is Rs.20 lakhs, and with a view to secure the said loan amount, the respondent no.1 has mortgaged his house situated at Kadamwadi, District Kolhapur. In July 2006 the amount of arrears in the loan account was in the sum of Rs.33,39,000/-. Hence the petitioner issued a notice under section 13(2) of the Securitisation Act. The respondent no.1 objected to the notice. The petitioner rejected the objection and proceeded to issue notice under section

13(4) of the Act with a view to take possession of the mortgaged property viz. secured assets. The respondent at that point of time filed a dispute seeking a declaration that the opponent no.1 and 2 who is a bank is not entitled to take possession of the property mentioned in para 9 viz.mortgaged property and other reliefs are also claimed including relief of injunction seeking to restrain the bank from recovering any amount till the decision of the dispute. The petitioner bank filed a written statement and raised a preliminary objection of the jurisdiction of the Co-operative Court, whereas the respondent no.1 moved an application for temporary injunction. The trial court allowed the application filed by the respondent borrower and restrained the bank from proceeding with the recovery of amount by having recourse to the provisions of the Securitisation Act. The respondent no.1 was directed to deposit a sum of Rs.5 lakhs which, I am informed that, the respondent no.1 had already deposited. Aggrieved by the order passed by the co-operative Court, instead of filing an appeal against the order before the Co-operative Appellate Court, the present writ petition has been filed. The reason assigned by the learned counsel for the petitioner bank for not moving the Appellate Authority is that the view of the appellate Authority was known to the petitioner as in

other two similar cases, the co-operative Appellate Court has confirmed the order of injunction granted by the trial court and the said orders have been quashed and set aside in a judgment passed in W.P.577/07 dated 6th July 2007. The learned counsel for the petitioner submits that as this court has already entertained the petition, no useful purpose would be served by relegating the petitioner to a statutory remedy though available. The learned counsel for the petitioner submits that the issue is squarely settled by the judgment of the Supreme Court in **Mardia Chemicals's case reported in AIR 2004 S.C. page 2371.** Relying upon the said judgment writ petition no.577/07 filed by the bank has been allowed. The learned counsel for the petitioner submits that the impugned order is wholly without jurisdiction and the bar of alternative remedy shall not come in the way of the petitioner in seeking a writ. Though there exists alternate remedy in the form of an appeal, I am entertaining the present writ petition, as the impugned order passed by the co-operative Court is wholly without jurtisdiction. The petitioner bank has proceeded under the provisions of Securitisation act and hence the co-operative Court could not have issued an order of injunction against the petitioner not to proceed under the said Act. The very object of Securitisation Act is to provide for an efficacious remedy for

recovery of the amount due to a bank by taking possession of the secured assets. The object of the said act is defeated by a temporary injunction order passed by the co-operative Court which is wholly without jurisdiction. For the reasons recorded in the judgment dated 6th July 2007 passed in W.P.577/07 and by relying on the ratio laid down by the Apex Court in Mardia's case the present writ petition is allowed. The impugned order passed by the co-operative Court restraining the bank from executing the notice issued under section 13(4) of the Securitisation Act is quashed and set aside. Rule made absolute in the above terms. No order as to costs.

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